

The respondent argues that claimant's left carpal tunnel syndrome was not related to his work at respondent but was caused by his subsequent employment at AGCO. Respondent asserts that claimant's cervical condition was nearly resolved by May 20,

2004. Respondent notes that claimant began working for AGCO on May 17, 2004, and contends that his increased cervical complaints as well as his left upper extremity complaints were related to his job activities at AGCO. Respondent also argues that the ALJ's decision to ignore the opinion of claimant's treating physician, Dr. Pat Do, was arbitrary and contrary to the evidence.

Claimant argues that the ALJ was justified in disregarding Dr. Do's alleged opinion concerning impairment as Dr. Do did not perform an impairment evaluation of the claimant. Claimant asserts that Dr. Do's opinion was not that claimant had no permanent impairment. Rather, Dr. Do testified that he had no opinion concerning whether claimant suffered a permanent impairment. Claimant also argues that there was no testimony or other evidence that contradicted his explanation of the nature of his job activities at AGCO and the fact that his conditions were not caused or aggravated by those activities. Claimant contends that the ALJ took a reasonable course of action in averaging the ratings of Drs. Stein and Murati in arriving at claimant's percentage of functional impairment and requests that this award not be disturbed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant started working for respondent as a temporary employee on September 5, 2002, and was hired and made a permanent employee on February 12, 2003. He started in the paint room, and in November 2003 he was promoted to lead man.

Claimant's job at respondent was to powder coat the metal line and garden decorations. The job consisted of overhead work. The main items he had to straighten were trellises which were about four feet long and two to three feet wide. The parts came on a conveyor and were suspended by hangers above head level. As the trellises came down the line, claimant would grab them with both hands and swing them so they were all going the same direction. The items hung so that the bottoms were at eye level. In order to perform the job, it was necessary for him to continuously look up and down and reach up and handle the heavy items.

In January 2004, claimant began to develop problems in his neck. He stated that the neck pain came on gradually then worsened over time. He reported the injury to respondent on January 16, 2004. Claimant indicated on the accident report that he had pain on the right side of his neck. However, he testified he was also having problems with his right shoulder at that time. He was sent to Dr. Dopps, a chiropractor, who treated him with chiropractic manipulations. The chiropractic treatments were not effective in relieving his symptoms. He was then sent to Dr. Do.

Claimant continued to work for respondent until May 14, 2004. During that time, his medical restriction was to limit his upward gaze. Respondent attempted to accommodate him by providing some ladders so he could climb up to move items. Claimant's problems continued to get worse, and he noticed that his left hand and the back of his left forearm began to hurt. Claimant testified that although there was no indication in his medical records that he complained about the left side of his neck, left arm, or hands before June 1, 2004, which was after he started working at AGCO, he told his therapist about those problems while he was still working for respondent, and also told his supervisor and Sandy LaSage.

At the time claimant left his employment with respondent in May 2004, he had a sharp pain in his neck going down to the back of his triceps and forearms and numbness in his left thumb, index finger, and middle finger. He testified that the turnover at respondent was high and he had temporary employees who did not know the job. He was forced to work outside his restriction.

Claimant started working for AGCO on May 17, 2004. At AGCO, he assembles and installs tractors and hay balers. In his new position, he does not have to look or work above his head. Since he started at AGCO, his condition has remained the same. He has not had an accident or incident at AGCO that caused any change in his symptoms. He uses wrenches, ratchets, impacts, measuring tools, and occasionally a hammer. He also uses an electronic dolly but does not use grinders, saws, or reamers. His current job requires him to put bolts and nuts on equipment and clamp them down with an impact tool. He does not use air-powered wrenches but uses an air ratchet. His work does not cause pain in his neck, left shoulder, or left arm because he does not do any reaching up.

Claimant still has constant pain in his neck. However he thinks the pain has decreased since he left his employment at respondent. He still has pain in his left shoulder and deltoid some of the time; his shoulder pain is not as intense as it was when he worked for respondent. Claimant has pain in his left triceps and wrist. His fingers are numb every now and then.

Sandra LaSage currently works for respondent but formerly worked for AGCO. In 1994, while working at AGCO, she helped create a description of the job claimant currently works. She ended her employment with AGCO in August 2001, and the job description had not changed to that time. She stated she was familiar with claimant's job at respondent and said it had minimal repetitive hand motion. On the contrary, she said the job claimant currently holds at AGCO requires very repetitious hand movement. She admitted, however, that she never saw claimant perform his work at AGCO.

Tom O'Bryan is production supervisor of AGCO and as part of his duties observes the production. He said that claimant works with a partner in the swather line. Claimant will unload a cab from the paint system with a hoist. When the swather tractor comes out of the oven area, he will remove paper and tape and add decals. Next, he and his partner

will lower the tractor on the front pins of the paint dolly, again using a hoist. He will need to install the handle cover. Next, he installs the lift cylinder stops, which requires that he use an air ratchet. He installs the coolant reservoir, using a ratchet or impact to tighten the screws. This task is performed at shoulder height. He next installs a condenser to the unit using both an air ratchet and a wrench. He then installs hoses to the condenser and to the pressure switch. He sets up the wiring so battery cables and jumper posts can be connected. He attaches the AC hoses using a hand wrench. He and his partner then align the cab when it is lowered onto the frame, using a hoist. He then crawls under the unit and attaches the brake relay using a wrench. Claimant can either crawl under on his hands and knees or use a creeper. He then routes the heater hoses through the frame, which can be done from under the tractor or from above. He hooks up some hoses, tightening the clamp with an impact tool. He will use a heat gun, like a blow dryer, to shrink wrap the heater hoses. He then routes the AC drain hoses and installs the grommets, using a zip-tie to tie them off. He then impacts the left side of the cab mounts tight.

Mr. O'Bryan did not know that claimant had a restriction against upward gazing while he supervised claimant. But the only time claimant had to look upward was when he was on the electronic dolly, and at those times he had a headrest. He said that claimant uses an air ratchet, but that it has very minimal vibration. He said that claimant has never complained of having been injured on the job at AGCO, nor did he ever say that he was working outside his restrictions.

Dr. Pat Do, a board certified orthopedic surgeon, first saw claimant on March 4, 2004. Claimant complained of right arm and right-side neck pain whenever he looked up. Dr. Do ordered an MRI of claimant's neck, which revealed a small disc protrusion at C6-C7. Dr. Do initiated physical therapy, and claimant showed some improvement with that physical therapy. The May 20, 2004, physical therapy note indicates that claimant reported that he could "look up now with only a hint of tightness/soreness in his neck now."¹

On June 10, 2004, Dr. Do's medical records indicate that "for the last week [claimant] has had left hand numbness and tingling."² That was the first date Dr. Do's records indicated that claimant complained of left-hand numbness and tingling, although the physical therapy notes indicated claimant complained about his left hand on June 1, 2004. Dr. Do last saw claimant on August 10, 2004, at which time claimant was still complaining of neck pain and left hand problems. Dr. Do had not released claimant as of the last time he saw him in August 2004, and claimant was not at maximum medical improvement. Dr. Do never did the evaluation necessary to give claimant a functional rating.

¹Do Depo., Ex. 2 at 18.

²P.H. Trans. (Nov. 30, 2004), Resp. Ex. 2 at 6.

Respondent's attorney sent information to Dr. Do. about claimant's job at AGCO, and Dr. Do. opined:

After thoroughly reviewing the job description of his current job it is my opinion that within a reasonable degree of medical probability the job that [claimant] is currently doing could indeed aggravate, accelerate, or intensify the symptoms related to his carpal tunnel syndrome and cervical radiculopathy.³

In reviewing claimant's job activities at AGCO, Dr. Do believes the task of attaching the vacuum and switch to the radiator cap, as well as working a device that he describes as like a blow dryer, using hand cutters and pliers, and crawling, caused claimant to develop carpal tunnel syndrome in his left hand. Dr. Do agreed that normally people tend to use their dominant hand to perform those types of activities, and claimant is right-hand dominant. There is no history of work activity at AGCO precipitating the onset of claimant's left arm complaints in either Dr. Do's notes or the physical therapy notes. Dr. Do testified that someone performing the listed activities could develop carpal tunnel syndrome within one or two days. However, Dr. Do admitted he did not know the amount of time claimant performed the listed activities or whether he used his right hand, left hand, or both hands. Also, the job description sent to Dr. Do initially was ten years old and may not accurately describe the job claimant was performing at AGCO.

Dr. Do believed the work activity at respondent caused claimant's neck problems as well as the pain he was having radiating down into the right arm.

Dr. Pedro Murati, who is board certified in physical medicine and rehabilitation, evaluated claimant at the request of his attorney on March 30, 2005. Claimant gave him a history of a work-related accident involving repetitive movement of continuously looking and reaching overhead. He complained of pain in his neck which radiated into his left arm with numbness and tingling. Claimant reported his treatment with Dr. Dopp and Dr. Do, including the physical therapy and injections. Dr. Murati reviewed the results of the EMG done on claimant and also reviewed the MRI.

Dr. Murati examined the claimant and diagnosed him with left C7 radiculopathy, left carpal tunnel syndrome, and myofascial pain syndrome affecting the bilateral shoulder girdles extending into the cervical paraspinals.

Based on the AMA *Guides*⁴ cervicothoracic diagnosis related estimate (DRE) Category III, Dr. Murati found that claimant had a 15 percent whole person impairment for the pain in his neck that radiated into the left arm. For the mild AC crepitus of the right

³P.H. Trans. (Nov. 30, 2004), Resp. Ex. 2 at 1.

⁴American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

shoulder, he gave claimant a 3 percent right upper extremity impairment, which converts to a 2 percent whole person impairment. For the glenohumeral crepitus of the left shoulder, he gave claimant a 6 percent left upper extremity impairment. For the left carpal tunnel syndrome, he gave claimant a 10 percent left upper extremity impairment. These combined for a 15 percent left upper extremity impairment, which converts to a 9 percent whole person impairment. Using the Combined Values Chart, these whole person impairments combine for a 25 percent whole person impairment.

Contrary to Dr. Stein's opinion, Dr. Murati found, in checking the EMG, that claimant had objective evidence of radiculopathy, which merits a higher impairment rating than in a patient who has no evidence of radiculopathy. Dr. Murati is also board certified in the use of EMGs.

Dr. Murati gave claimant permanent restrictions in order that he prevent further injury. They include no climbing ladders, no crawling, no heavy grasping with the left hand, no above shoulder work, no work more than 24 inches from the body, no use of hooks or knives, no use of vibratory tools, avoid awkward positions of the neck, and no lifting, carrying, pushing and pulling more than 75 pounds, 50 pounds occasionally and 35 pounds frequently.

Claimant was referred to Dr. Paul Stein for an independent medical evaluation (IME) by the ALJ. He was seen on January 21, 2005. Dr. Stein reviewed medical records and took a history from claimant concerning his injury, medical history, medical treatment, and job history. Dr. Stein concluded:

Given that there was no neck symptomatology prior to January of 2004, and assuming that the original onset in that month was work-related, one would have to further assume, within a reasonable degree of medical probability, that the subsequent left upper extremity symptomatology was an outgrowth of the original injury.⁵

Dr. Stein indicates that claimant's symptomatology suggests that he had left-sided nerve root irritation, possibly the C6 or C7 root. Dr. Stein found no radiculopathy to the extent required by the *AMA Guides* for a permanent impairment rating and no nerve root compression. Dr. Stein stated that although claimant may have very mild carpal tunnel syndrome, it does not appear to be related to his work incident of January 2004. Dr. Stein rated claimant as having a 5 percent whole person impairment based on the DRE cervicothoracic Category II of the *AMA Guides*.

The Board agrees with the ALJ's findings and conclusions and adopts them as its own. In particular, the Board agrees that claimant suffered personal injury by accident

⁵Stein IME report (Jan. 21, 2005) at 4.

arising out of and in the course of his employment with respondent. Based upon the credible expert medical opinion testimony, claimant has proven a 15 percent permanent impairment of function and is entitled to an award of permanent partial disability compensation based upon that percentage of impairment to the body as a whole.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated March 8, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John L. Carmichael, Attorney for Claimant
 Terry J. Torline, Attorney for Self-Insured Respondent
 Nelsonna Potts Barnes, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director